COLLAS CRILL

Trusts Jersey Law: Once, twice...eighth time amended

DECEMBER 2025

The States of Jersey has amended the Trusts (Jersey) Law 1984 (TJL) for an eighth time.[1] The legislation has gone to the Privy Council for approval and is expected to come into force shortly.

The 2024 consultation paper[2] canvassed views on whether to amend the TJL in five areas in which there were perceived difficulties with the current law or where it was thought improvements could be made.

Following that consultation, the following amendments to the TJL represent significant changes:

Closing the door on Saunders v Vautier

There will be a significant amendment to Art 43 TJL. This provision, in its unamended form dating back to when the TJL was first enacted, is a statutory approximation of what is known as the rule in Saunders v Vautier.[3]

Article 43 provides that where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors, they may require the trustee to terminate the trust and distribute the trust property among them.

In 2019, in two decisions from the Guernsey Royal Court[4] and Court of Appeal[5] considered the operation of the Guernsey equivalent of Art 43 TJL (which is in exactly the same terms as the Jersey legislation). Those decisions confirmed that where there was a sole default beneficiary of a Guernsey law trust, not withstanding that it may have been the intention to add further beneficiaries and there was power (which had not yet been exercised) under the trust to do so, the sole beneficiary could use the Guernsey legislation to terminate the trust and there was very little the trustee could do about it.

The amendments to Art 43 TJL are designed to avoid a repeat of the outcome of the *Rusnano v Molard* litigation from occurring in Jersey. The amendments, highlighted below, significantly restrict the ability of beneficiaries to act together to terminate a trust at their election.

Amendments to Art 43 of the Trusts Jersey Law

43 Termination of a Jersey trust (amendments highlighted in bold)

(1) On the termination of a trust the trust property shall be distributed by the trustee within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

(2) Notwithstanding paragraph (1), Article 43A applies on the termination of a trust.

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(3) Without prejudice to the powers of the court under paragraph (4) and notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors they may require the trustee to terminate the trust and distribute the trust property among them.

(3A) But paragraph (3) does not apply in relation to a trust:

(a) if there are any other persons who could become beneficiaries in accordance with the terms of, or pursuant to the exercise of any power under, the trust; or

(b) if the terms of the trust provide for the disposition of trust property for a charitable or non-charitable purpose.

(4) The court may:

(a) require the trustee to distribute the trust property;

(b) direct the trustee not to distribute the trust property; or

(c) make such other order as it thinks fit.

(5) [Repealed]

(6) An application to the court under this Article may be made by any person referred to in Article 51(3).

The law, as amended, states that now even if the beneficiaries of the trust are all of full age and capacity, the trust cannot be terminated if there is the possibility, under the terms of the trust, of other beneficiaries being able to benefit from the trust in future. A termination will be effectively blocked by the presence, in the terms of the trust, of unreleased, but as yet unexercised powers to:

- add to the beneficial class;
- vary the terms of the trust; or
- appoint the trust assets onto new or different terms for different beneficiaries

New Art 43(3A)(b) also makes clear that if the trust provides for benefit from the trust to either an unspecific charitable purpose (i.e. not a named charity) or a non-charitable purpose (which are permitted under Jersey law) then that will be sufficient to block an attempt by the beneficiaries to terminate the trust under Art 43 TJL.

In other words Art 43 TJL, as amended, will only permit the termination of a trust by beneficiaries in very narrow circumstances, namely where:

- the class of beneficiaries is entirely closed, there being no power to add or vary the beneficial class (or those power have been irrevocably released by the trustee); and
- there is no overarching power of appointment (or that power has been irrevocably released by the trustee); and

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- there are no other charitable objects or non-charitable purposes for which the trust property is to be held.

These amendments relate only to the ability of the beneficial interests in the trust to act together to terminate the trust. They do not affect the state of the law concerning the ability of beneficiaries capable of assenting, to collectively agree to variations to the terms of a trust.

Subordination of the trustee's lien

The long-running *Z Trust (II)* litigation[6] (in which Collas Crill acted) established, for the first time, a number of important principles of trust law concerning:

- The nature and extent of a trustee's lien (and the right of a trustee to recover liabilities and expenses from the trust assets by way of its indemnity); and
- The priority of the rights accorded by the trustee's lien as against successor trustees; and
- The impact on the trustee's lien of the solvency of the trust in respect of which it is asserted.

Something left outstanding by the Privy Council's decision in *Z Trust (II)* was the issue of the position of external secured creditors to a trust and how their security ranked in priority vis-à-vis the incumbent (and former) trustee's lien.

Trustees (present and former) count as secured creditors by virtue of their liens, which rank equally vis-à-vis one another and there is no 'first in time' rule in favour of an earlier trustee against a later one.

Unsecured creditors of the trust will rank *pari passu* (subrogated to the lien of the trustee with whom they contracted and alongside the other creditors of that trustee).

It seems (although it was not clear) that secured creditors, external to the trust, still benefit from a first-in-time priority vis-à-vis other later secured creditors and rank in priority as against the trustee from whom they were granted their security. However, it wasn't clear whether they would rank in priority to a former trustee's lien.

Art 43A TJL has been amended to resolve the question definitively.

Amendments to Art 43A of the Trusts Jersey Law

43A Security (amendments highlighted in bold)

(1) A trustee –

(a) who –

(i) resigns, retires, is removed or otherwise ceases to be a trustee, or

(ii) distributes trust property; or

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(b) of a trust that is terminated or wholly or partly revoked,

may, before distributing or surrendering trust property, as the case may be, require to be provided with reasonable security for liabilities whether existing, future, contingent or otherwise.

(1A) No account is to be taken of any lien arising by operation of law in considering a trustee's right to require to be provided with reasonable security under paragraph (1).

(2) Where security required to be provided under paragraph (1) is in the form of an indemnity, the indemnity may be provided in respect of –

(a) the trustee or a person engaged in the management or administration of the trust on behalf of the trustee;

(b) any or all of the present, future or former officers and employees of the trustee or person engaged in the management or administration of the trust on behalf of the trustee; and

(c) the respective successors, heirs, personal representatives or estates of the persons mentioned in sub-paragraphs (a) and (b),

and any person in respect of whom the indemnity is provided under this paragraph may enforce the terms of the indemnity in their own right (whether or not they are party to the contract or other arrangement providing the indemnity).

(3) If an indemnity to which paragraph (2) refers is extended or renewed by a contract or other arrangement and that contract or other arrangement provides an indemnity in respect of any of the persons referred to in paragraph (2), any such person may enforce the terms of the indemnity in their own right (whether or not they are party to that contract or other arrangement).

.**(4) An interest in or over trust property, granted or created at any time by the trustee of the trust, that secures the payment or performance of an obligation (including an obligation owed to a trustee or former trustee) takes priority over any lien arising in favour of the trustee or former trustee by operation of law, unless the secured party agrees otherwise.**

(5) For the purposes of paragraph (4), it is immaterial whether the interest is granted or created under the law of Jersey or another jurisdiction.

The new provision confirms that any security interest (of whatever kind, wherever and whenever created under the law of any justification in the world) that is granted by a trustee to secure the performance of any obligation, will always rank in priority to any lien of the current, former or future trustee.

This amendment is prospective in its effect only, meaning that while it will apply to any trust created before or after the amendment, the effect on the order of priorities will only impact prospectively.

Art 43A TJL has also been amended to make clear that any consideration of the trustee's lien, that arises by operation of law, is irrelevant to the question of what 'reasonable' security amounts to for the purposes of the rest of Art 43A TJL.

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How can we help?

If you have any questions arising from these changes to Jersey law or would like any advice or need representation concerning a Jersey trust, please do not hesitate to contact a member of the team highlighted to the right of this page.

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[1] https://www.jerseylaw.je/laws/pending/Pages/TrustsAmendmentLaw202-_ADOPTED.aspx

[2] https://www.gov.je/Government/Consultations/Pages/TrustsLawAmendments.aspx

[3] (1841) Cr & Ph 240

[4] Rusnano v Molard [2019] GRC011

[5] Rusnano v Molard [2019] GCA 077

[6] ETJL v Halabi; ITGL v Fort Trustees [2022] UKPC 36

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